

EXHIBIT C

From: Zeke DeRose III
To: ZWEIFACH, Ben; geraldine.young@nortonrosefulbright.com; Vissichelli, Allison M.; Ayla Syed; Audrey Moore; Jonathan Wilkerson; Alex J. Brown; Marc B. Collier; John McBride; Peter M. Hillegas; Trevor Young; Noah Heinz; Zina Bash; Joseph M. Graham Jr.; Ashley Keller; Brooke Smith; jdugan@dugan-lawfirm.com; Isabela Pena-Gonzalez; James S. Renard; Abraham Chang; GoogleAdTechStateAGServiceList@KellerPostman.com; James R. Hall; Caitlin Coslett; GZelcs@KoreinTillery.com; Noss, Walter; Lv, Kate; sclerkin@KoreinTillery.com; Steinmetz, Jamie; learnhardt@bsflp.com; mmao@bsflp.com; Philip Korologos; Jordan Elias; tmaya@ahdootwolfson.com; sdavidson@rgrdlaw.com; MCamozzi@rgrdlaw.com; MAngotti@rgrdlaw.com; svash@hermanjones.com; jthorne@kelloggghansen.com; "Eric Maier"; "Goodnow, Christopher C."; jrubin@moginrubin.com; oliver@moginrubin.com; MRParalegal@moginrubin.com; kmbaxter-kauf@locklaw.com; pmarkert@cerallp.com; ciones@hermanjones.com
Cc: MAHR, Eric (EJM); MCCALLUM, Robert; Bitton, Daniel S.; Pearl, David; Justus, Bradley; Perez, Katie E.; ELMER, Julie (JSE); FOLCHI, Sara; SALEM, Sara; SESSIONS, Justina (JKS); EWALT, Andrew (AJE); BRANDON, Eric; Vissichelli, Allison M.; Steinthal, Russell M.; Haws, Claire L.; MURRAY, Sean; SVENSON, Ross; Singh, Darpan R.; Yung, Eva H.; Reiser, Craig M.; Paul Yetter; Bracewell, Mollie; Ayla Syed; BAYOUMI, Jeanette; BOSCO, Veronica
Subject: Re: Google's Objections to Subpoena for EDTX Deposition Materials
Date: Friday, May 3, 2024 2:52:32 PM

Caution: External Email

Hi Ben,

I can confirm that Texas has accepted service of the MDL subpoena you reference below and Texas has no objection to complying with the subpoena. While Texas doesn't share your characterization of the subpoena as improper, we do recognize that Texas has obligations under the EDTX protective order and intend on complying with those obligations, which includes giving Google an opportunity to seek relief with Judge Castel. If Google intends to promptly seek a protective order with Judge Castel, we will not produce any responsive Google documents until that process is resolved.

You can access the subpoena through the following link:

<https://txoag.box.com/s/fia1wnwat6yhvgk2qdsd6nrbvb3c4s36>

Zeke DeRose III - Attorney p: 713-659-5200 w: www.LanierLawFirm.com

From: "ZWEIFACH, Ben" <Ben.Zweifach@freshfields.com>

Date: Wednesday, May 1, 2024 at 2:20 PM

To: "geraldine.young@nortonrosefulbright.com"

<geraldine.young@nortonrosefulbright.com>, Ali Vissichelli <avissichelli@axinn.com>, Ayla Syed <asyed@yettercoleman.com>, Audrey Moore <Audrey.Moore@LanierLawFirm.com>, Zeke DeRose III <Zeke.DeRose@LanierLawFirm.com>, Jonathan Wilkerson <Jonathan.Wilkerson@LanierLawFirm.com>, "Alex J. Brown" <Alex.Brown@LanierLawFirm.com>, "Marc B. Collier" <marc.collier@nortonrosefulbright.com>, John McBride <john.mcbride@nortonrosefulbright.com>, "Peter M. Hillegas" <peter.hillegas@nortonrosefulbright.com>, "Trevor Young" <Trevor.Young@oag.texas.gov>,

Noah Heinz <Noah.Heinz@kellerpostman.com>, Zina Bash <zina.bash@kellerpostman.com>, "Joseph M. Graham Jr." <joseph.graham@nortonrosefulbright.com>, Ashley Keller <ack@kellerpostman.com>, Brooke Smith <brooke.smith@kellerlenkner.com>, "jdugan@dugan-lawfirm.com" <jdugan@dugan-lawfirm.com>, Isabela Pena-Gonzalez <isabela.pena-gonzalez@nortonrosefulbright.com>, "James S. Renard" <james.renard@nortonrosefulbright.com>, Abraham Chang <abraham.chang@nortonrosefulbright.com>, "GoogleAdTechStateAGServiceList@KellerPostman.com" <GoogleAdTechStateAGServiceList@KellerPostman.com>, "James R. Hall" <james.hall@nortonrosefulbright.com>, Caitlin Coslett <ccoslett@bm.net>, "GZelcs@KoreinTillery.com" <GZelcs@KoreinTillery.com>, "Noss, Walter" <Wnoss@KoreinTillery.com>, "Lv, Kate" <KLv@KoreinTillery.com>, "sclerkin@KoreinTillery.com" <sclerkin@KoreinTillery.com>, "Steinmetz, Jamie" <jsteinmetz@koreintillery.com>, "iearnhardt@bsfllp.com" <iearnhardt@bsfllp.com>, "mmao@bsfllp.com" <mmao@bsfllp.com>, Philip Korologos <pkorologos@BSFLLP.com>, Jordan Elias <jelias@girardsharp.com>, "tmaya@ahdootwolfson.com" <tmaya@ahdootwolfson.com>, "sdavidson@rgrdlaw.com" <sdavidson@rgrdlaw.com>, "MCamozzi@rgrdlaw.com" <MCamozzi@rgrdlaw.com>, "MAngotti@rgrdlaw.com" <MAngotti@rgrdlaw.com>, "svash@hermanjones.com" <svash@hermanjones.com>, "jthorne@kelloggghansen.com" <jthorne@kelloggghansen.com>, "Eric Maier" <emaier@kelloggghansen.com>, "Goodnow, Christopher C." <cgoodnow@kelloggghansen.com>, "jrubin@moginrubin.com" <jrubin@moginrubin.com>, "oliver@moginrubin.com" <oliver@moginrubin.com>, "MRParalegal@moginrubin.com" <MRParalegal@moginrubin.com>, "kmbaxter-kauf@locklaw.com" <kmbaxter-kauf@locklaw.com>, "pmarkert@cerallp.com" <pmarkert@cerallp.com>, "cjones@hermanjones.com" <cjones@hermanjones.com>

Cc: "MAHR, Eric (EJM)" <Eric.MAHR@freshfields.com>, "MCCALLUM, Robert" <rob.mccallum@freshfields.com>, Daniel Bitton <dbitton@axinn.com>, "dpearl@axinn.com" <dpearl@axinn.com>, Bradley Justus <bjustus@axinn.com>, "kperez@axinn.com" <kperez@axinn.com>, "ELMER, Julie (JSE)" <Julie.Elmer@freshfields.com>, "FOLCHI, Sara" <Sara.Folchi@freshfields.com>, "SALEM, Sara" <Sara.Salem@freshfields.com>, "SESSIONS, Justina (JKS)" <Justina.Sessions@freshfields.com>, "EWALT, Andrew (AJE)" <Andrew.Ewalt@freshfields.com>, "BRANDON, Eric" <Eric.Brandon@freshfields.com>, Ali Vissichelli <avissichelli@axinn.com>, "Steinthal, Russell M." <rsteinthal@axinn.com>, "Haws, Claire L." <chaws@axinn.com>, "MURRAY, Sean" <Sean.Murray@freshfields.com>, "SVENSON, Ross" <Ross.Svenson@freshfields.com>, "Singh, Darpan R." <dsingh@axinn.com>, "Yung, Eva H." <eyung@axinn.com>, "Reiser, Craig M." <creiser@axinn.com>, Paul Yetter <pyetter@yettercoleman.com>, "Bracewell, Mollie" <mbracewell@yettercoleman.com>, Ayla Syed <asyed@yettercoleman.com>, "BAYOUMI, Jeanette" <Jeanette.Bayoumi@freshfields.com>, "BOSCO, Veronica" <Veronica.Bosco@freshfields.com>

Subject: Google's Objections to Subpoena for EDTX Deposition Materials

Counsel,

We write to notify you of Google's objections to the Subpoena dated April 26, 2024 issued to the State of Texas (the "Subpoena") by counsel to Genius Media Group Inc. and the Publisher Class in *In re: Google Digital Advertising Antitrust Litigation*, No. 1:21-md-03010 (PKC) (S.D.N.Y.) (the "MDL"). The Subpoena seeks production of deposition transcripts, deposition notices, and sealed filings from *State of Texas et al. v. Google LLC*, No. 4:20-cv-957-SDJ (E.D. Tex.) (the "Texas Case").

The Subpoena represents the latest in MDL Plaintiffs' series of attempts to circumvent both the deposition limits set by Judge Castel in the MDL and Judge Castel's denial of coordination with the Texas Case. *See* Pre-Trial Order No. 8 (MDL ECF No. 708); Pre-Trial Order No. 5 (MDL ECF No. 394). As set forth in our letter to MDL Plaintiffs dated April 23, 2024, MDL Plaintiffs have refused to respond to Google's request that they "explain how they propose to use these deposition transcripts and exhibits." In that April 23 letter we also asked Plaintiffs to confirm if they "are proposing that deposition transcripts from the Texas Case should be usable as though taken in" the MDL and, if so, to "confirm that these will count against Plaintiffs' deposition limit in" the MDL "or explain why the depositions should not count against the limit set by Judge Castel in Pre-Trial Order No. 5. ECF No. 394."

Rather than respond to Google's reasonable requests, MDL Plaintiffs have now issued the Subpoena directly to Texas, which is improper for several reasons. First, the Subpoena contravenes Judge Castel's denial of coordination between the MDL and the Texas Case, *see* Pre-Trial Order No. 8, and "nothing in [the EDTX Protective Order] should be construed as authorizing or encouraging [State Plaintiffs] in this Action to disobey a lawful directive from another court." EDTX ECF No. 182 ¶ 25. Second, under the terms of the EDTX Protective Order, State Plaintiffs are not permitted to share any information designated by Google or a third party as Confidential or Highly Confidential. EDTX ECF No. 182 ¶ 17. We note that "[a]ll transcripts of depositions taken in [the Texas Case] after entry of this Order will be treated as Highly Confidential Information in their entirety for 45 days after the date of the deposition." *Id.* ¶ 7. Moreover, any deposition testimony that "summarize[s]...or reveal[s]" Confidential Information also qualifies as Confidential. *Id.* ¶ 1.

State Plaintiffs are required to promptly notify Google "in writing" of a Subpoena compelling the production of information Google designated as Confidential or Highly Confidential and to "cooperate with respect to all reasonable procedures sought to be pursued" by Google. *Id.* ¶ 24 (laying out other requirements for such notice).

Consistent with Paragraph 24 of the EDTX Protective Order, and to enable Google to timely respond to this improper subpoena, we ask that State Plaintiffs confirm by no later than May 3, 2024 whether they have been properly served with the Subpoena and, if so, whether they intend to comply with it. Until this discovery dispute is resolved, State Plaintiffs may not produce any documents (including Confidential or Highly Confidential documents) to MDL Plaintiffs in response to the Subpoena.

Sincerely,

Benjamin S. Zweifach
Associate

Freshfields Bruckhaus Deringer US LLP

700 13th Street, NW

10th Floor

Washington, DC 20005

T + 1 202-777-4542 | M +1 202-997-3708

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